

No. 25-965

In the Supreme Court of the United States

DANIEL GRAND,

Petitioner,

v.

CITY OF UNIVERSITY HEIGHTS, OHIO, *et al.*,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES
COURT OF APPEALS FOR THE SIXTH CIRCUIT

**BRIEF AMICUS CURIAE OF
THE BECKET FUND FOR RELIGIOUS LIBERTY
IN SUPPORT OF PETITIONER**

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INTEREST OF THE *AMICUS*¹

The Becket Fund for Religious Liberty is a non-profit law firm that protects the free expression of all religious faiths and the freedom of religious people and institutions to participate fully in public life. Becket has also represented numerous prevailing parties in this Court. See, e.g., *Hosanna-Tabor Evangelical Lutheran Church & Sch. v. EEOC*, 565 U.S. 171 (2012); *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682 (2014); *Holt v. Hobbs*, 574 U.S. 352 (2015); *Zubik v. Burwell*, 578 U.S. 403 (2016); *Our Lady of Guadalupe Sch. v. Morrissey Berru*, 591 U.S. 732 (2020); *Little Sisters of the Poor Saints Peter & Paul Home v. Pennsylvania*, 591 U.S. 657 (2020); *Fulton v. City of Philadelphia*, 593 U.S. 522 (2021); *Catholic Charities Bureau, Inc. v. Wisconsin Lab. & Indus. Rev. Comm’n*, 605 U.S. 238 (2025); *Mahmoud v. Taylor*, 606 U.S. 522 (2025).

Becket has long been involved in land-use litigation under the Religious Land Use and Institutionalized Persons Act (RLUIPA), 42 U.S.C. 2000cc *et seq.* Becket brought the nation’s first RLUIPA land-use case after the statute was enacted in 2000, see *Haven Shores Cmty. Church v. City of Grand Haven*, No. 00-cv-175 (W.D. Mich.) (consent decree signed Dec. 21, 2000), and has been involved in RLUIPA litigation on behalf of a wide variety of religious practitioners ever since.

Becket also filed an *amicus* brief in *Knick v. Township of Scott*, 588 U.S. 180 (2019), raising the issue

¹ No counsel for a party authored this brief in whole or in part and no person other than *Amicus*, its members, or its counsel made a monetary contribution intended to fund the preparation or submission of this brief.

now squarely before the Court in this case: whether the finality rule this Court articulated in *Williamson County* also applies to RLUIPA and related First Amendment claims. Becket files this brief to urge the Court to definitively address that question, and to reject application of *Williamson County*'s Takings Clause-specific finality rule in the RLUIPA and free-exercise context.

INTRODUCTION AND SUMMARY OF THE ARGUMENT

The right to assemble with fellow believers, as Congress recognized in enacting RLUIPA, lies “[a]t the very core of religious liberty.” The lower court’s importation of *Williamson County*’s finality requirement into religious-land-use litigation subjects that core liberty to the machinations of local bureaucrats. Religious practitioners become stuck in often expensive and protracted zoning-board processes while their rights are actively infringed. And far from being “already chosen” for a “happy end,” Dante, *Purgatorio* III.73-74 (Hollander trans.), practitioners in *this* purgatory frequently are just waiting around to receive a final no. RLUIPA does not require, or indeed tolerate, their having to suffer irreparable losses of religious exercise in the meantime.

Williamson County’s requirement that landowners receive a “final decision” on how a regulation applies to a particular property before suing makes at least some sense in its original context—regulatory takings claims—where a court needs to evaluate the regulation’s ultimate effect to determine if it has sapped the property of all economic value. It makes no sense in the religious exercise context where, under this

Court’s precedent, a practitioner like Grand suffers irreparable harm each time he forgoes convening a *minyan* at his home for fear of government penalty. That explains why, when Congress enacted a statute expressly protecting religious land use, it identified triggers for the plaintiff to bring a claim that do not depend on *Williamson County* finality. And Congress was explicit that RLUIPA claims should be evaluated against only Article III’s jurisdictional requirements, not prudential ones like *Williamson County*.

To hold otherwise would open the door to the exact hostility and mistreatment of religious land use that RLUIPA was enacted to prevent. Examples abound in lower courts that have applied the *Williamson County* finality requirement to religious-land-use claims. Churches and worshipers have been prevented from assembling for religious exercise by local zoning authorities across the country, sometimes for years, with no federal recourse, all in the name of “finality” that never comes.

The bare fact that RLUIPA pertains to land use provides no sound basis for importing takings law into the statute. Rather, RLUIPA’s focus on religious land use is itself an accident of history, ultimately resulting from this Court’s erroneous decision in *Employment Division v. Smith*. Rather than allow *Smith* to further distort free-exercise protections, the Court should reject the extension of *Williamson County* to religious-land-use claims.

ARGUMENT

I. Religious exercise rights protected by RLUIPA are not subject to a Takings Clause finality requirement.

RLUIPA was enacted “to provide very broad protection for religious liberty,” *Holt v. Hobbs*, 574 U.S. 352, 356 (2015)—including, specifically, when that liberty is assertedly infringed by local land-use authorities. Nothing in RLUIPA’s text or history suggests that Congress included in it anything like the Takings Clause-based finality requirement this Court articulated in *Williamson County*, which would allow those same local land-use authorities to indefinitely evade judicial review.

Indeed, to import that requirement into RLUIPA would *disfavor* religious claimants in the land-use context, imposing additional procedural barriers on religious exercise claims tied to land use over and above those applying to any other religious exercise claim. That could hardly be Congress’s intent in passing a statute with the express purpose of *safeguarding* religious land use. The expensive and interminable bureaucratic delays endured by worshipers in lower courts that have taken this step only confirms it is mistaken. This Court should reject the notion that *Williamson County* applies to religious-land-use claims like Grand’s.

A. RLUIPA contains no *Williamson County* finality requirement.

1. In *Williamson County*, this Court set out two preliminary requirements for a property owner to bring a Fifth Amendment Takings Clause claim under 42

U.S.C. 1983. One of these requirements—that a property owner must first “seek[] just compensation” “through the procedures the state had provided for doing so”—this Court overruled in *Knick*. 588 U.S. at 188, 206 (cleaned up). This case concerns the other—that a regulatory takings claim “is not ripe until the government entity charged with implementing the regulations has reached a final decision regarding the application of the regulations to the property at issue.” *Williamson Cnty. Reg’l Plan. Comm’n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985).

Both requirements purportedly derived from the specific language of the Fifth Amendment. The exhaustion requirement, this Court said, “stems from the Fifth Amendment’s proviso that only takings without ‘just compensation’ infringe that Amendment.” *Suitum v. Tahoe Reg’l Plan. Agency*, 520 U.S. 725, 734 (1997). And the finality requirement “follows from the principle that only a regulation that ‘goes too far’ results in a taking” in the first place. *Ibid.* (citation omitted). On its own terms, then, *Williamson County* is founded on the specific demands of the Fifth Amendment. And this Court has explicitly held that the finality requirement at issue here applies to “claim[s] that the application of government regulations effect[] a *taking* of a property interest.” *Williamson Cnty.*, 473 U.S. at 186 (emphasis added).

2. The takings-specific *Williamson County* doctrine has no place in RLUIPA. Nothing in RLUIPA mentions any unique finality requirement. And RLUIPA’s substantive terms make clear that no *Williamson County*-style finality requirement applies. RLUIPA prohibits applications of land-use regulations that

(1) “impose[] a substantial burden” on religious exercise without a compelling interest; (2) that are applied “in a manner that treats a religious assembly or institution on less than equal terms with a nonreligious assembly or institution”; or (3) that “discriminate[] against any assembly or institution on the basis of religion or religious denomination.” 42 U.S.C. 2000cc(a)(1), (b)(1), (b)(2).

Unlike in the regulatory takings context—where a final zoning decision is required to determine whether a regulation “goes too far, result[ing] in a taking under the Fifth Amendment,” *Suitum*, 520 U.S. at 734 (cleaned up)—the harms to religious exercise that RLUIPA protects against can and do accrue before any final zoning decision is reached. For example, a government can impose a “substantial burden” by forcing churches to navigate expensive and byzantine permitting requirements before holding worship services; and it can “discriminate” by subjecting disfavored religious minorities to more onerous application requirements than local majority faiths. See Douglas Laycock & Luke Goodrich, *RLUIPA: Necessary, Modest, and Under-Enforced*, 39 Fordham Urb. L.J. 1021, 1025-1032 (2012) (discussing numerous examples).

Further, nothing suggests that RLUIPA land-use claimants must satisfy any procedural hurdles beyond Article III’s ordinary requirements of standing and ripeness. RLUIPA explicitly states that “[s]tanding to assert a claim or defense under this section shall be governed by the general rules of standing under article III of the Constitution.” 42 U.S.C. 2000cc-2(a). And as “standing and ripeness ‘originate’ from the same Article III limitation” and often “boil down to the same question,” this explicit grant of jurisdiction applies to

ripeness requirements as well. *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 157 n.5 (2014).

Nor does the statute incorporate any *prudential* requirements—the judge-made category in which this Court has placed *Williamson County* finality. See *Suitum*, 520 U.S. at 733-734 & n.7 (describing *Williamson County* as “prudential ripeness principles,” not derived from Article III). “[U]nlike their constitutional counterparts,” “judicially self-imposed limits on the exercise of federal jurisdiction * * * can be modified or abrogated by Congress.” *Bennett v. Spear*, 520 U.S. 154, 162 (1997) (cleaned up). Congress did precisely that here. This Court should “take [the] statute[] at face value—refusing to” graft onto it other, “unwritten limits.” *Ross v. Blake*, 578 U.S. 632, 639 (2016).

Indeed, “it is particularly inappropriate to read language into a statute * * * when, as here, Congress has shown that it knows how to adopt the omitted language or provision.” *Corner Post, Inc. v. Board of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799, 814 (2024) (cleaned up). Congress certainly knows how to impose additional exhaustion and finality requirements before a claimant can ask a federal court for vindication. Congress routinely limits statutorily created causes of action to challenges to “final agency action.” 5 U.S.C. 704; see also 28 U.S.C. 2342 (granting appellate court jurisdiction over “all final orders” and “all final agency action”); 42 U.S.C. 405(g) (allowing judicial review “after any final decision of the Commissioner of Social Security”). And Congress often imposes express exhaustion requirements—under the Prison Litigation Reform Act, for example, prisoners must exhaust any

available administrative remedies before suing in federal court. See 42 U.S.C. 1997e(a). Strikingly, RLUIPA itself cross-references the PLRA (including its exhaustion requirement) as continuing to govern under RLUIPA’s institutionalized-persons provisions. 42 U.S.C. 2000cc-2(e) (“[n]othing in this chapter shall be construed to amend or repeal the Prison Litigation Reform Act of 1995”). But RLUIPA makes no mention of a similar requirement for land-use claims.

Lacking a foothold in RLUIPA’s text, the lower court nevertheless held that no RLUIPA claim is ripe “until the relevant administrative agency resolves the appropriate application of the zoning ordinance to the property in dispute.” Pet.App.7a (cleaned up). “Of course, Congress always has the option of imposing” such a finality requirement on RLUIPA claims, “[b]ut it has not done so.” *Pakdel v. City & County of San Francisco*, 594 U.S. 474, 481, (2021). Instead, it made clear that the same Article III requirements that apply to any other religious exercise claim apply to RLUIPA claims. See 42 U.S.C. 2000cc-2(a).

The Article III standard is well-settled—and has been since well before Congress enacted RLUIPA. Plaintiffs can have ripe religious exercise claims based on “the deterrent, or ‘chilling,’ effect of governmental regulations that fall short of a direct prohibition against the exercise of First Amendment rights.” *Laird v. Tatum*, 408 U.S. 1, 11 (1972).² Of course, that

² As courts have explained, “[t]his principle applies with equal force to the violation of RLUIPA rights because RLUIPA enforces First Amendment freedoms, and the statute requires courts to construe it broadly to protect religious exercise.” *Opulent Life Church v. City of Holly Springs*, 697 F.3d 279, 295 (5th Cir. 2012);

chill must be more than merely “subjective.” *Id.* at 13-14. So courts may ask whether the challenged government action or requirement would meaningfully deter a reasonable person’s religious exercise. That inquiry, in some land-use cases, could include an evaluation of how readily a permit or variance might be obtained, or whether there is evidence of discrimination in the process itself, or whether the ordinance imposes unequal terms on religious uses. If the ordinary Article III standard is met, however, there is no freestanding requirement that the plaintiff seek a final decision on a variance request before suing. A plaintiff “suffering an ‘objectively reasonable chill’ to its First Amendment” rights is entitled to a “federal forum.” *First Choice Women’s Res. Ctrs., Inc. v. Davenport*, 146 S. Ct. 1114, 1126-1127 (2026).

Grand’s religious exercise has undoubtedly been chilled by the City’s actions, since he has been unable to hold a *minyan* on a weekly basis since receiving the cease-and-desist letter for fear of reprisal from the City. Pet.App.115a-117a. And this chill has gone far past subjective, as Petitioner aptly explains. See Pet.Br. at 16-19 (chronicling campaign of police surveillance and investigations to ensure Grand did not host prayer gatherings). Neither the Constitution nor RLUIPA’s plain text require Grand to show anything more to ask a federal court to intervene.

3. Beyond RLUIPA’s clear text, the legislative record underlying RLUIPA shows that Congress was concerned not only with the overt burdens imposed by

see also *Religious Sisters of Mercy v. Becerra*, 55 F.4th 583, 608-609 (8th Cir. 2022) (collecting cases applying similar principles to RFRA).

land-use laws but also with the “often covert” burdens that can be imposed in the zoning process. 146 Cong. Rec. S7775 (daily ed. July 27, 2000) (joint statement of Sens. Orrin Hatch and Ted Kennedy on RLUIPA). For example, evidence before Congress established that “it is not uncommon for ordinances to establish standards for houses of worship differing from those applicable to other places of assembly, such as *where they are conditional uses* or not permitted in any zone.” H.R. Rep. No. 106-219 at 19 (emphasis added). And the statute’s sponsors explained that it does not “relieve religious institutions from applying for variances”—*if* they are “available without discrimination or unfair delay.” 146 Cong. Rec. S7776 (daily ed. July 27, 2000) (joint statement of Sens. Orrin Hatch and Ted Kennedy).

In enacting RLUIPA, Congress also examined a long line of specific bureaucratic land use abuses harming religious exercise. Many of these abuses could not be remedied—at least not without years of costly administrative and court proceedings—were *Williamson County*’s finality requirement imposed.

Take the example of the long-running litigation involving Congregation Etz Chaim, a small Hasidic *shul* in the Hancock Park neighborhood of Los Angeles. The dispute began in 1996 and involves similar circumstances to those at issue here. To serve a community of orthodox Jews living in Hancock Park, the Congregation purchased a building in a residential neighborhood. To accommodate the needs of many of the Congregation’s elderly and disabled members who could not feasibly walk to a synagogue on the Sabbath or Holy Days, the congregation regularly convened a *minyan* in the building. Upon application, the City denied the congregation a permit to use the property as

a non-residential house of worship, despite exempting schools from the residential zoning requirements and allowing all kinds of secular groups to gather in the same neighborhood. See *Protecting Religious Freedom After Boerne v. Flores (Part II): Hearing Before the Subcomm. on the Constitution of the H. Comm. on the Judiciary*, 105th Cong. 32-36 (1998) (statement of Rabbi Chaim Baruch Rubin, Congregation Etz Chaim, Los Angeles, California). The Congregation's rabbi testified at the House committee hearing on the first iteration of the RLUIPA bill, the Religious Liberty Protection Act, about the futility of the congregation's attempts to obtain a permit to gather for worship. *Id.* at 35-36. He explained that the zoning denial effectively excluded orthodox Jews from a nine-square-mile area of the City based on their proximity to a place to gather for worship. *Id.* at 33.

The story of Etz Chaim was repeated as the exact type of bureaucratic abuse Congress intended to end with RLUIPA. The House Committee on the Judiciary included the case in the committee report on the Religious Liberty Protection Act. See H.R. Rep. No. 106-219 at 22. Senator Kennedy described the case on the floor when he introduced the bill that became RLUIPA, 146 Cong. Rec. S6689 (daily ed. July 13, 2000) (statement of Sen. Ted Kennedy), and Representative Hyde included the case in a list of examples submitted as an extension of his remarks, after enactment but prior to signing by the President, 146 Cong. Rec. E1566 (daily ed. Sep. 22, 2000) (statement of Rep. Henry Hyde). Based on this record, it's clear that Congress intended RLUIPA to protect the Congregation's ability to convene a *minyan* at their property.

Following RLUIPA's enactment, the City and Congregation entered into a settlement agreement allowing the Congregation to convene a *minyan* on their property based on RLUIPA's protections. But after residents successfully challenged the settlement agreement as void under state law, the Congregation was forced to submit yet another application for a conditional use permit while simultaneously attempting to vindicate its RLUIPA rights in federal court. See *Congregation Etz Chaim v. City of Los Angeles*, No. 97-cv-5042, 2009 WL 1293257, at *1-5 (C.D. Cal. May 5, 2009) (describing procedural history). Relying on *Williamson County*'s finality requirement, the court held that even after 12 years of litigation and a court-ordered consent decree, the Congregation's RLUIPA claims *still* were not ripe because the City *might* grant the Congregation's new application. *Id.* at *7-9.

But the City again did not approve the Congregation's application, and instead the Congregation had to prove its RLUIPA claims in federal court, where it ultimately prevailed. See *Congregation Etz Chaim v. City of Los Angeles*, No. 10-cv-1587, 2011 WL 12472550, at *10 (C.D. Cal. July 11, 2011). It wasn't until 2013—after 17 years of administrative review and litigation and 13 years after RLUIPA's enactment—that the Congregation ultimately received a permanent injunction protecting its religious exercise. See Judgment, Dkt. 187, *Congregation Etz Chaim v. City of Los Angeles*, No. 10-cv-1587 (C.D. Cal. May 15, 2013). At least four years of that delay was a direct result of *Williamson County*, despite Congress's direct attempts to protect the Congregation through RLUIPA.

The legislative record reveals other land-use conflicts that Congress meant for RLUIPA to protect, but that would not meet *Williamson County*'s finality requirements. During the Senate floor debate, Senator Kennedy highlighted a Richmond, Virginia, ordinance requiring any church wishing "to feed more than thirty hungry and homeless people to apply for a conditional use permit at a cost of \$1,000." 146 Cong. Rec. S6689 (daily ed. July 13, 2000) (statement of Sen. Ted Kennedy). "[B]eyond the means of most churches," that fee effectively created "a statutorily imposed fee for the exercise of a basic and fundamental tenet of the Christian faith[.]" *Ibid.* Yet under the lower court's analysis here, a church would not have a ripe RLUIPA claim to challenge this ordinance, since churches *could* request a permit that the city *may* grant—despite that many churches would give up their ministries altogether in the face of an application fee they could not pay.

Representative Hyde also highlighted several situations as violative of RLUIPA that would not pass the lower court's standard, including one in which a pastor and his wife received a warning for inviting five college students over to the pastor's house for a Bible study without a permit. 146 Cong. Rec. E1566 (daily ed. Sep. 22, 2000) (statement of Rep. Henry Hyde).

Congress intended broad protections for these religious worshipers under RLUIPA, but *Williamson County*'s finality requirement would drastically undermine that result.

B. Importing a *Williamson County*-style finality requirement into RLUIPA and Free Exercise law would have untoward consequences.

Given the unique characteristics of religious land use, importing a *Williamson County*-style finality requirement into RLUIPA claims is not only contrary to RLUIPA's text and history but likely to be especially damaging. Experience in the circuits that have taken this step confirm the point.

1. *Williamson County* proceeds on the assumption that zoning authorities, having initially denied a proposed land use, will consider in good faith whether "to clarify or change [their] decision." *Pakdel*, 594 U.S. at 480; see also *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340, 353 n.9 (1986) ("Rejection of exceedingly grandiose development plans does not logically imply that less ambitious plans will receive similarly unfavorable reviews."). But that assumption often does not hold true when the proposed land use is religious.

Rather, the unique characteristics of religious practice often make it "a uniquely disfavored land use." Laycock & Goodrich, 39 Fordham Urb. L.J. at 1039. "In some areas of the country, some churches" and other houses of worship "are unpopular because of religious or racial discrimination." *Id.* at 1025. Houses of worship are "especially vulnerable" to "Not In My Back Yard"—"NIMBY"—resistance, since "the vast majority of residents know they will never attend a proposed new church." *Id.* at 1032. And houses of worship are "tax exempt, and local officials do not like taking property off the tax rolls." *Id.* at 1036.

For all these reasons, religious-land-use proposals often “face hostility in the zoning context.” Laycock & Goodrich, 39 Fordham Urb. L.J. at 1032, 1036-1037. And that hostility, paired with a *Williamson County*-style finality rule, is a recipe for suppressing religious exercise under the guise of holding open avenues for reconsideration down the line.

2. The egregious facts of this case are Exhibit A, but they are hardly alone. The abuses that Congress considered and sought to remedy by enacting RLUIPA have reappeared, due in large part to lower courts’ grafting of *Williamson County* onto the statute.

Consider an earlier Sixth Circuit decision, *Miles Christi Religious Order v. Township of Northville*, 629 F.3d 533 (6th Cir. 2010). There, the Sixth Circuit applied *Williamson County* to dismiss a small religious order’s Free Exercise and RLUIPA claims. Zoning authorities determined that the order’s longstanding use of a home had “intensified” to the level of “a small church or place of worship” and thus that the order would have to “go through the town’s site review process, beginning by submitting a site plan, to ensure” the property met the heightened requirements. *Id.* at 542-543 (Batchelder, J., dissenting). But “completing and submitting the site plan itself” would cost \$30,000, such that the fathers and brothers were “being put to the choice of either paying for an expensive site plan or curtailing or eliminating [their] religious activities.” *Id.* at 543, 546. And in the meantime, the town was “[t]hreatening to ticket vehicles parked on the lawn, conducting surveillance of the religious order, recording license plates and issuing a ticket for a zoning violation.” *Id.* at 540 (majority).

Further, the religious order alleged that the intensity determination was based on discriminatory animus, an allegation supported by the government’s “troubling” statements at oral argument—for example, “that ‘football parties and tailgate parties’ do not change ‘the residential nature of the use; whereas, what they’re doing here, they’re doing religious education and they’re worshipping.’” *Miles Christi*, 629 F.3d at 549 (Batchelder, J., dissenting). Even the majority agreed these statements indicated “an undeveloped sense for the concept of religious liberty.” *Id.* at 540. Still, the court held that the religious order’s Free Exercise and RLUIPA claims were unripe under *Williamson County*, and that the order must either submit a site plan—at a minimum cost of \$30,000—or appeal the intensity determination—effectively requiring an exhaustion of administrative remedies—before asserting a RLUIPA claim, simply to continue the same religious exercise it had conducted at the property for years. *Id.* at 537-542.

Another example is *Guatay Christian Fellowship v. County of San Diego*, 670 F.3d 957 (9th Cir. 2011). There, the plaintiff church held services on its property for 22 years without incident, but was then informed it must undergo a burdensome and cost-prohibitive permitting process to continue using the building as a church. Specifically, after more than two decades of unchanged land use, zoning authorities warned the church that its “continued operation” on the property was “illegal,” and threatened to “cut all electrical power to the Church complex” if the church continued meeting there without obtaining a special-use permit. *Id.* at 965. But completing the process of applying for a special-use permit—including paying

the “fees,” resolving the “project issues,” and handling the “public reviews that had to be completed before a Use Permit could issue”—would cost the church “between \$214,250 and \$314,250” and take “approximately fourteen months to three years.” *Id.* at 967-968. Nonetheless, applying *Williamson County*, the Ninth Circuit dismissed the church’s RLUIPA claim, holding that because the church had not applied for a special-use permit, its “RLUIPA claims [were] unripe.” *Id.* at 976-980.

Miles Christi and *Guatay* are representative of the problems inherent in applying *Williamson County* to RLUIPA claims, but numerous lower-court decisions have likewise applied *Williamson County* in similar circumstances. See, e.g., *Sumana Forest Retreat v. County of San Diego*, No. 24-cv-1196, 2025 WL 1296696, at *1-2, 8 (S.D. Cal. May 5, 2025) (dismissing RLUIPA claim under *Williamson County* even after zoning authority took no action on application for religious retreat center for over two years and stated application would “never” be approved because retreat center could apply for different type of use permit); *Congregation Anshei Roosevelt v. Planning & Zoning Bd. of Borough of Roosevelt*, 338 F. App’x 214, 215-219 (3d Cir. 2009) (affirming dismissal of RLUIPA claim under *Williamson County* where borough zoned preexisting synagogue and yeshiva into noncompliance and overturned zoning officer’s decision that yeshiva could continue to operate); *Life Covenant Church, Inc. v. Town of Colonie*, No. 14-cv-1530, 2017 WL 4081907, at *1-9 (N.D.N.Y. Sep. 13, 2017) (dismissing RLUIPA claim under *Williamson County* despite church’s submission of numerous applications for building new place of worship and town’s “repeated delays” over

three years and attempt to condition approval on regulating number and timing of worship services and forbidding weddings and funerals as purportedly “external to church services”); *Congregation Rabbinical College of Tartikov, Inc. v. Village of Pomona*, 915 F. Supp. 2d 574, 597-607 (S.D.N.Y. 2013) (dismissing RLUIPA claim under *Williamson County* even though “troubling” statements by officials indicated that challenged ordinance was passed specifically to exclude plaintiff Jewish congregation); *Cassidy v. City of Brewer*, No. 12-cv-137, 2012 WL 5844897, at *1 & n.3 (D. Me. Nov. 19, 2012) (dismissing RLUIPA claim under *Williamson County* notwithstanding code enforcement officer’s denial of church tenant’s expansion permit, causing church to discontinue its tenancy and cease religious services at the location).

These cases fail to grapple with the fact that *Williamson County*’s finality and exhaustion requirements were designed to determine when a plaintiff had suffered a particular type of injury—an uncompensated taking. And they well illustrate that importing *Williamson County* into free-exercise and RLUIPA claims is not only doctrinally mistaken but practically harmful.

3. Aside from these cases, the potential consequences of importing *Williamson County* into the context of religious-land-use claims further show that the maneuver is untenable.

On the Sixth Circuit’s view, *Williamson County* applies anytime the government action involves “application of [a] zoning ordinance.” Pet.App.7a. The trouble is that the government is the party that decides what its zoning ordinances are. Cf. *Congregation Anshei Roosevelt*, 338 F. App’x at 215 (synagogue “was

constructed before the Borough adopted any zoning regulations, but subsequent zoning ordinances” and conditions rendered its operation impermissible). Thus, the Sixth Circuit’s view allows local governments to impose burdens on religious exercise and then indefinitely forestall judicial review under *Williamson County* as long as they write the religion-burdening ordinance into their zoning laws, as opposed to some other part of the municipal code. That makes no sense and would permit odd and troubling results.

Imagine, for instance, that rather than passing an ordinance “making religious animal sacrifice unlawful,” Hialeah passed a zoning restriction outlawing animal slaughter but allowing applications for conditional use permits. *Church of Lukumi Babalu Aye, Inc. v. City of Hialeah*, 508 U.S. 520, 527 (1993). And instead of carving out exemptions for “licensed establishment[s]” that kill animals “specifically raised for food purposes” and small commercial butchers, *id.* at 528, the City simply granted every other entity a conditional use permit, while issuing the Santería Church a cease-and-desist letter, thus forcing it to spend years seeking a permit. Such a scheme is no less violative of the First Amendment than the religious gerrymander ruled unconstitutional by this Court in *Lukumi*. Yet the Sixth Circuit’s rule would mean the Santería Church has no federal claim until the end of that potentially years-long process. That cannot be the law.

Or during the COVID-19 pandemic, for example, this Court was repeatedly forced to intervene in a pre-enforcement posture to protect religious practitioners who were being prohibited from gathering for worship—including for “at-home religious exercise” like

that Grand seeks to engage in here. *Tandon v. Newsum*, 593 U.S. 61, 63-65 (2021) (per curiam); see also, e.g., *Roman Catholic Diocese of Brooklyn v. Cuomo*, 592 U.S. 14 (2020). As this Court recognized in those cases, “attending religious services” is conduct “at the very heart of the First Amendment’s guarantee of religious liberty,” and preventing such attendance, “for even minimal periods of time, unquestionably constitutes irreparable injury.” *Diocese of Brooklyn*, 592 U.S. at 19-20.

Under the Sixth Circuit’s approach, however, governments could have evaded these lawsuits indefinitely simply by embedding the challenged restrictions into their zoning laws. Such an approach certainly would have left “land-use policy * * * in local, politically accountable hands.” Pet.App.7a. But it also would have allowed to continue unabated some of the “greatest intrusions on civil liberties in the peacetime history of this country.” *Arizona v. Mayorkas*, 143 S. Ct. 1312, 1314 (2023) (statement of Gorsuch, J.). And it would have required religious practitioners to miss many more instances of “Mass on Sunday or services in a synagogue on Shabbat.” *Diocese of Brooklyn*, 592 U.S. at 67-68.

Nor is the point limited to direct restrictions on worship. As long as a religious exercise takes place on real property, the Sixth Circuit’s rule would seem to permit municipalities to burden that exercise via zoning restrictions and then indefinitely delay accountability under *Williamson County*.

But perhaps the oddest application of *Williamson County* to religious land use is the very one at issue here, in a case involving a zoning ordinance preventing a religious practitioner from using his home for

communal worship. From Jesus' disciples in the upper room,³ to the private chapels of recusant Catholics in early modern England,⁴ to the house churches of modern China,⁵ at-home communal worship has long offered a refuge (even if often an inadequate one) for religious practitioners facing suppression of their public worship by local authorities. The lower court's decision allows governments to ban even this core outlet for religious practice, with no opportunity for a timely federal remedy.

II. Applying Takings Clause finality requirements to free-exercise claims is a distortion stemming from *Smith*.

The logic for transplanting a Takings Clause rule into RLUIPA has some appeal: both *Williamson County* and RLUIPA concern land use.

The problem is that the existence of a land-use-specific religious freedom statute is itself something of an accident of history. RLUIPA resulted from this Court's decisions in *Smith* and *Boerne*, which forced Congress to shunt its protections against state interference with religious exercise into a statute addressing land use and prisons only. To somehow conclude that Congress intended to brand religious land use as categorically different from all other religious exercise is therefore

³ *E.g.*, *Mark* 14:12-16.

⁴ Dom Bede Camm, *Forgotten Shrines: An Account of Some Old Catholic Halls and Families in England and of Relics and Memorials of the English Martyrs* (1910).

⁵ *E.g.*, *Shu Han Liu v. Holder*, 718 F.3d 706, 707-708 (7th Cir. 2013); Easten Law, *The Church in China Isn't What You Think*, *Plough Magazine*, Mar. 25, 2026, <https://perma.cc/U3DE-VBF7>.

mistaken, and in effect permits *Smith* to continue to distort the law.

In *Employment Division v. Smith*, this Court held that certain laws burdening religious exercise that are “neutral” and “generally applicable” are subject only to rational basis review. 494 U.S. 872, 878 (1990). Congress responded by enacting the Religious Freedom Restoration Act (RFRA) to fully restore the pre-*Smith* rule that federal, state, and local governments may only substantially burden religious exercise if doing so furthers a compelling interest by the least restrictive means. *Gonzales v. O Centro Espírita Beneficente Uniao do Vegetal*, 546 U.S. 418, 430 (2006). But in *City of Boerne v. Flores*, this Court held RFRA unconstitutional as applied to state and local governments because it exceeded Congress’s enforcement power under Section 5 of the Fourteenth Amendment. 521 U.S. 507, 533-534 (1997).

Congress “responded” to *Smith* and *Boerne* “by enacting RLUIPA pursuant to its Spending Clause and Commerce Clause authority.” *Sossamon v. Texas*, 563 U.S. 277, 281 (2011); see 42 U.S.C. 2000cc(a)(2). RLUIPA “borrows important elements from RFRA,” *Sossamon*, 563 U.S. at 281, imposing “the same general test as RFRA but on a more limited category of governmental actions,” *Hobby Lobby*, 573 U.S. at 695-696; see also H.R. Rep. No. 106-219 at 13 (different “means” but same “ends” as RFRA). In other words, Congress chose local land-use actions as a category of government action to specifically regulate only because it was first constrained to look for narrower categories by this Court. *Boerne* forced Congress to rely

on enumerated powers outside its Section 5 enforcement power to “target[]” this particular “area[] of state and local action.” *Sossamon*, 563 U.S. at 281.

The legislative record bears this out. “Mindful of the limitations enunciated by the Court in *Boerne*,” Congress turned to “well settled sources of Congressional authority for the protection of religious exercise.” H.R. Rep. No. 106-219 at 12 (determining that, “[a]fter the *Boerne* decision, the power of Congress in the area of religious liberty is limited to the spending power, regulating interstate commerce, and remedying state infringements on due process, equal protection, or the privileges and immunities of citizenship”). Congress endeavored to “follow[] the Court’s directive in *Boerne* to aim legislation * * * at certain laws where there is a significant likelihood of unconstitutionality.” *Ibid.* Local land-use regulation was among them, since the “evidence strongly indicate[d] a pattern of abusive and discriminatory actions by land-use authorities who have imposed substantial burdens on religious exercise.” *Id.* at 17. But Congress’s fundamental goal in protecting religious land use *specifically* was to protect free exercise *generally*, to the greatest degree it could, since Congress believed that the “ability to assemble for worship” is “[a]t the very core of religious liberty.” *Id.* at 18; see also 42 U.S.C. 2000cc-3 (“broad protection of religious exercise, to the maximum extent permitted by * * * the Constitution”).

To the extent, then, that decisions like the one below are influenced by a view that religious-land-use claims under RLUIPA are somehow fundamentally different from other varieties of religious freedom claims, the ultimate culprit is *Smith*, which occasioned

Congress’s enactment of a land-use-specific free-exercise statute in the first place and which has confounded First Amendment jurisprudence for decades.

Smith has many problems. For starters, it “paid shockingly little attention to the text of the Free Exercise Clause. Instead of examining what readers would have understood its words to mean when adopted, the opinion merely asked whether it was ‘permissible’ to read the text to have the meaning that the majority favored.” *Fulton*, 593 U.S. at 564 (Alito, J., concurring) (quoting *Smith*, 494 U.S. at 878). Spurred by *Smith*’s surprising incuriosity, “scholars have explored the subject in great depth”—and to near-round reproach. *Id.* at 554, 612 (Alito, J., concurring) (examining original-meaning efforts from “the country’s most distinguished scholars of the Religion Clauses”). Tellingly, since *Smith*, this Court has repeatedly refused to expand its rule broadly to various categories of free-exercise cases—for example, church autonomy, *Hosanna-Tabor*, 565 U.S. at 190, and otherwise available public benefits, *Carson v. Makin*, 596 U.S. 767, 780 (2022). But as five Justices have acknowledged, such tonics do not detract from the ongoing need to reevaluate *Smith*. See *Fulton*, 593 U.S. at 543 (Barrett, J., joined by Kavanaugh, J., concurring) (describing *Smith*’s rule as a First Amendment aberration); *id.* at 545-546 (Alito, J., joined by Thomas and Gorsuch, JJ., concurring) (“fundamentally wrong”).

Whether or not this Court ultimately revisits *Smith*—or, for that matter, *Boerne*⁶—it should at minimum not allow a decision that was wrong in itself to spawn further distortion. Here, that means undoing the lower court’s erroneous importation of *Williamson County*’s finality requirement into RLUIPA’s independent protections for religious land use.

CONCLUSION

The decision below should be reversed.

⁶ See, e.g., Christopher R. Green, *Clarity and Section Five*, 39 Notre Dame J.L. Ethics & Pub. Pol’y 147, 149-157 (2025) (cataloging “six big problems” in *Boerne*’s Section 5 analysis); Christopher W. Schmidt, *Originalism and Congressional Power to Enforce the Fourteenth Amendment*, 75 Wash. & Lee L. Rev. Online 33, 37 (2018) (“Considerable evidence shows that the history of the framing and ratification of the Fourteenth Amendment reflects an understanding of the enforcement power that is less deferential to Court-developed rules of constitutional interpretation than the model of the Section 5 power * * * offered in *Boerne*.”); Michael W. McConnell, *Institutions and Interpretation: A Critique of City of Boerne v. Flores*, 111 Harv. L. Rev. 153, 194 (1997) (“The historical record shows that the framers of the [Fourteenth] Amendment expected Congress, not the Court, to be the primary agent of its enforcement, and that Congress would not necessarily consider itself bound by Court precedents in executing that function.”); William D. Araiza, *Arming the Second Amendment and Enforcing the Fourteenth*, 74 Wash. & Lee L. Rev. 1801, 1811 (2017) (exploring “the difficulty the Court may face if and when it confronts legislation enforcing the Second Amendment” under *Boerne*’s standard); William Baude, *Problems with Boerne v. Flores*, Divided Argument (May 15, 2026), <https://perma.cc/7T63-JNW8> (surveying four originalist objections).

Respectfully submitted.

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SEPTEMBER 2026